Motion to dismiss

Woods

736

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1069.

GEORGE P. HUMPHREY, APPELLANT,

vs.

SANFORD BAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 28, 1890.

Dismissed

SUPREME COURT OF THE UNITED STATES.

No. 1069.

GEORGE P. HUMPHREY, APPELLANT,

vs.

SANFORD BAKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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1 *Mandate of Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable
[SEAL.] the judges of the circuit court of the United States for the eastern district of Michigan, greeting:

Whereas lately in the circuit court of the United States for the eastern district of Michigan, before you, or some of you, in a cause between Sanford Baker, complainant, and George P. Humphrey, Hiram D. Hurd, Charles A. Hurd, and David Smith, defendants, wherein the decree of the said circuit court, entered in said cause on the 11th day of April, A. D. 1876, is in the following words, viz:

"At a session of said court held at the court-house in Detroit, Michigan, on the tenth day of April, 1876, present the honorable Halmer H. Emmons, judge of said court, the above cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: That the bill of complaint filed therein be dismissed with costs."

And, afterwards, on the 17th day of May, A. D. 1876, the following entry appears of record, to wit:

"This cause having been heard on pleadings and proofs at chambers, and a decree dated the 10th day of April, 1876, having been signed dismissing the bill in this cause, and on request of the solicitor for the complainant at the time of such dismissal that the entry of said decree be postponed and take effect as of the 10th day of May, 1876, and the defendants' solicitor consenting thereto, the said decree having been prematurely entered on the eleventh day of April, it is ordered that the said decree be amended so that the hearing of said cause, the said decree, and the entry thereof take effect as of and from the tenth day of May, 1876," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the
2 United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that the said complainant recover against the said defendant, George P. Humphrey, et al., one hundred and fifty-six dollars and eighty-six cents, for his costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to enter a decree whereby it shall be required that the complainant, Baker, deposit in the clerk's office for the use of the defendant, George P. Humphrey, the sum of $25, and that Humphrey thereupon convey to Baker the premises described in the bill, and that the deed contain a covenant against the grantor's own acts and against the demands of all other persons claiming under him.

10th May, 1880.

You, therefore, are hereby commanded that such execution & further proceedings be had in said cause, in conformity with the opinion and

decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and eighty.

Costs of complainant: Clerk, $136.86; attorney, $20.00; $156.86.

Taxed by James H. McKenney, clerk of the Supreme Court of the United States.

Filed June 20, 1880.

A. MANDELL, *Clerk.*

3 Supreme Court U. S., October term, 1879.

Costs of Sanford Baker in No. 267, 1877; ent. ac. 50; cit. and serv., 40; bond and app., 40; ass. of er., 40; rec., 100; fee bond, 40; Oct. term, ap. 21; ru., 28; pre., 40; fil. pa., 40; ord., 28; con., 14; 1878, Oct. T., ap. 21; ru., 28; ord., 28; con. 14; 1879, Oct. T., ap. 21; ru., 28; rec., 40; br., 4.00; agr., 56; mo., 28; jud., 1.64; fil., 40; rec. pr. mo. and aw., 56; mand., 5.98; fil. pa., 2.40; cop. of record, 106.25; co. op., 7.00; co. and co., 56.; $136.86.—$136.86, fee books pa., 113.

Test:

JAS. H. McKENNEY,
C. S. C., U. S.

1880, May 28.—Rec'd pay't. Theodore Romeyn, esq.

JAMES H. McKINNEY,
C. S. C., U. S.

4 *Affidavit of filing bill of review & supplemental bill.*

The circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEO. P. HUMPHREY, HIRAM D. HURD, CHARLES A. Hurd, and David Smith.

EASTERN DISTRICT OF MICHIGAN,
County of Wayne, ss:

John Atkinson, being duly sworn, says a bill in the nature of a bill of review and supplement has been filed in this court by Geo. P. Humphrey, the above named defendant, against Sanford Baker, the above named complainant, to obtain a rehearing of this cause upon facts which have arisen therein since the appeal to the Supreme Court, and to obtain compensation for improvements made and taxes paid by said Geo. P. Humphrey & said Hurds and Smith; that a subpœna has been issued upon said bill & placed in the marshal's hands for service.

JOHN ATKINSON.

Subscribed and sworn to before me June 7, 1880.

JNO. GRAVES,
U. S. Cir't Comm'r, E's Dist. Mich.

Filed June 7th, 1880.

JNO. GRAVES,
Deputy Clerk.

5 *Notice of hearing on settlement of decree & form of deed.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, CHARLES A. Hurd, and David Smith.

To Messrs. ATKINSON, HAWLEY, AND ATKINSON,
Solicitors for def'd't Humphrey:

Please take notice that the mandate issued by the Supreme Court of the United States in this cause, reversing the decree of this court and for further proceedings, has been filed with the clerk, and the complainant has paid into court the sum of twenty-five dollars as required by said court, and that on Monday next, the 7th day of June instant, or as soon thereafter as counsel can be heard, an application will be made to said court to enter a decree in said cause of the form and effect of the draft of such decree herewith served, and also to settle and determine the form of the deed to be executed by the said George P. Humphrey to the complainant pursuant to said mandate, & a draft of such deed proposed is also served upon you herewith, and that such court make such other and further order in this cause as shall be just and equitable.

Detroit, June 2d, 1880.

D. C. HOLBROOK,
Sol'r for Compl't.

STATE OF MICHIGAN, EASTERN DISTRICT,
County of Wayne:

Joseph S. Ayres, of said county and State, being duly sworn, says that on the second day of June, 1880, he served a copy of the above deed and decree, together with a notice of which the annexed is a true copy, upon Atkinson, Hawley and Atkinson, solicitors for the
6 defendant Humphrey in the above-entitled cause, by delivering the same to a clerk in the office of Atkinson and Atkinson, successors to Atkinson, Hawley and Atkinson, who had charge thereof, said Atkinson being absent therefrom.

JOSEPH S. AYRES.

Subscribed and sworn to before me this 5 day of June, 1880.
JOHN ROBERTSON,
Notary Public, Wayne County, Mich.

Filed June 7th, 1880.

A. MANDELL, *Clerk.*

7 *Copy form of deed attached to notice.*

This indenture made this day of , in the year one thousand eight hundred and eighty, between George P. Humphrey, of Cheboygan, Cheboygan County, State of Michigan, of the first part, and Sanford Baker, of the same place, of the second part, witnesseth:

That whereas on the tenth day of June, in the year one thousand eight hundred and seventy-two, one Bela Chapman, deceased, late of Macinac, in the State of Michigan, made, executed, and delivered to the

said party of the first part a quit-claim deed, purporting to convey to the said party of the first part the following described premises, to wit: the south half or part of lot three in section twenty-nine in township thirty-eight north, range one west, in Cheboygan County, State of Michigan.

And whereas by virtue of a decree entered in the circuit court of the United States for the eastern district of Michigan, in equity, on the day of , 1880, in a certain cause therein pending, wherein the party of the second part is complainant, and the said party of the first part and Hiram D. Hurd, Charles A. Hurd, and David Smith are defendants, it was adjudged and decreed that the said party of the second part was and is entitled to all the right, title, and interest in and to said premises which the said party of the first part obtained by and through said deed from said Chapman to him and as of the date thereof, and that said deed inured to the benefit of said party of the second part and all the rights which the said party of the first part obtained thereby were adjudged and decreed to be vested in said party of the second part at and of the date of said deed.

And whereas it was further ordered and decreed that the said party of the first part make, execute, acknowledge, and deliver to the said party of the second part a deed conveying to him and his heirs the said premises, and that said deed contain a covenant against all the acts of the party of the first part and against the demands of all other persons claiming said premises from or under him:

8 Now, therefore, in con'eration of twenty-five dollars paid into said court by said party of the second part for the use of the said party of the first part and in compliance with said decree, the said party of the first part doth hereby grant, sell, remise, release, alien, and confirm unto the said party of the second part, all and singular the said premises above described and set forth, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all and singular the estate, right, title, and interest which the the said party of the first part obtained or acquired by virtue of the deed of said Bela Chapman to him of said premises, to have and to hold the said premises above described with the appurtenances unto the said party of the second part, his heirs and assigns forever. And the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party [of the second part*], his heirs and assigns, that he, the said party of the first part, hath not heretofore done [or*] committed, [or willingly suffered to be done or committed,*] any act or thing whatsoever whereby the premises hereby granted or any part thereof is, are, or shall or may be charged or incumbered in title, estate, or otherwise however.

In witness whereof the said party of the first part hath hereunto set his hand and seal on the day and year first above written.

[L. S.]

Signed, sealed, and delivered in presence of—

9 *Final decree.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room, in the city of Detroit, on Monday the seventh

* In pencil in the original.—PRINTER.

day of June, in the year one thousand eight hundred and eighty—present, honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPL'T,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith, def'ts. } In equity.

An appeal having been taken in this cause by the complainant to the Supreme Court of the United States, and it appearing by the mandate of said court now filed that the same was argued and submitted to said co'rt, and having been duly considered, it was decreed that the decree of this court entered in said cause dismissing the bill filed therein be, and the same was on the tenth day of May, 1880, reversed, with costs, and that the said complainant recover against the said defendants the sum of one hundred and fifty-six dollars and eighty-six cents for his costs in said Supreme Court expended, and that he have execution therefor, and it was further ordered that this cause be, and the same thereby was, remanded to this court, with directions to enter a decree whereby it shall be required that the complainant deposit in the office of the clerk of this court for the use of the defendant George P. Humphrey the sum of twenty-five dollars, and that said Humphrey thereupon convey to the complainant the premises described in the bill in this cause, and that the deed contain a covenant against the grantor's own acts and against the demands of all other persons claiming under him.

And this cause being now called for the entry of a decree therein in pursuance of said mandate, on motion of D. C. Holbrook, solicitor for complainant, it is ordered, adjudged, and decreed by this court, the complainant having deposited with the clerk of this court the sum of twenty-five dollars for the use of the defendant George P. Humphrey, that the said George P. Humphrey within twenty days after service on him of a copy of this decree make, execute, acknowledge, and deliver to the complainant a deed of and conveying to him and his heirs the following described premises situate in the county of Cheboygan, State of Michigan, to wit, the south part of lot three of section twenty-nine, in township thirty-eight north, range one west, being the same premises purporting to be conveyed to said George P. Humphrey by Bela Chapman the tenth day of June, 1872, by deed recorded in the office of register of deeds for the county of Cheboygan, Michigan, in Book D of deeds, page one hundred and forty-three, and that said deed contain a covenant against all the acts of said George P. Humphrey, and against the demands of all other persons claiming said premises from or under him, and it appearing to this co'rt from the pleadings and the opinion of the said Supreme Court that the said complainant was and is entitled to all the right, title, and interest in and to said premises which the said George P. Humphrey obtained by and through said deed of said Chapman to him and as of the date thereof:

It is further ordered and decreed that the said deed inured to the benefit of said complainant, and all the rights which the said Humphrey obtained thereby be, and the same are hereby, adjudged and decreed to be vested in said complainant, and as of the date of said deed, and it is further ordered that this decree be recorded in the office of the register of deeds for the county of Cheboygan, where said real estate is situated.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the said George P. Humphrey and David Smith, defend-

ants, the sum of one hundred and fifty-six dollars and eighty-six cents, the costs as taxed in said Supreme Court, and also the costs and expenses incurred by the complainant in this court, including the expenses
11 of the record in this court remitted to the said Supreme Court, and that the same be taxed in this court, and the complainant have execution therefor against George P. Humphrey and David Smith.

HENRY B. BROWN.

12 *Order settling form of deed.*

eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Monday the seventh day of June, in the year one thousand eight hundred and eighty—present, honorable Henry B. Brown, district judge.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith. } In equity.

The motion made in this cause for the entry of a decree thereon, and for the settlement of the form of the deed to be executed by said George P. Humphrey to the complainant having been heard and the decree granted, it is further ordered that the deed to be granted by the said George P. Humphrey to the complainant be of the form proposed and filed on said motion in this cause.

13 *Order that def't Humphrey show cause, &c., in contempt.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Wednesday, the fourteenth day of July, in the year one thousand eight hundred and eighty. Present, honorable Henry B. Brown, district judge.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith. } In equity.

On reading and filing due proof of the service on the defendant George P. Humphrey of a copy of the final decree entered in this cause, also of a copy of the deed to be executed by him as settled by this court, and also on reading and filing the affidavits of the complainant and his solicitor, showing the default and failure of said George P. Humphrey to execute and deliver the deed directed to be executed by him in and by said decree, and within the time therein specified, on motion of D. C. Holbrook, solicitor for complainant, it is ordered that the said George P. Humphrey show cause before this court on the twenty-sixth day of July, A. D. 1880, why he should not be declared in contempt of this court for not executing and delivering said deed, and in case of his failure to show such cause, that an attachment for contempt do issue against him to bring him before this court to answer therefor.

HENRY B. BROWN.

Entered & filed July 14th, '80.

A. MANDELL, *Clerk.*

14 *Compl't's bill of costs.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, David Smith.
} Complainant's bill of costs.

Witness' fees.

Name.	
John Vincent, days attendance, 1; travel, 3 miles	$1 65
Charles Bannock, 1; 2 miles	1 60
Philip Brees, 1	1 50
Watts S. Humphrey, 1	1 50
George P. Humphrey, 1	1 50
Medard Melevier, 1	1 50
Francis M. Sammons, 3	4 50
George Roblin, 1	1 50
George W. Bell, 1	1 50
Attendance taking nine (9) depositions above	18 00
Attendance taking depositions of defendants' witnesses, 15, to wit: Hiram D. Hurd, Sanford Baker, Samuel H. Taylor, John Atkinson, Sylvester Sammons, George W. Bell, David Smith, D. C. Holbrook, Wm. McArthur, Chancey Stevenson, Medard Melevier, Moses W. Home, Archibald P. Newton, Watts S. Humphrey	30 00
Paid for copy of deed, Belote to Duncan	1 50
" " " " " Smith to Baker	1 50
" " " of powers of att'y to McArthur	1 50
" " " " deed, Sammons to Scott	1 50
Paid for copy of mortgage, Chapman to Scott	1 50
15 Bill of complaint	3 00
Paid for copies of deeds, Exhibit A	51 00
Paid Samuel A. Taylor, notary, taking depositions	10 50
Serving subpœna to appear and answer on 4 persons, and 330 miles travel, at 6 c'ts	27 80
Paid for making record for Supreme Court	51 00
Paid half expenses for Hiram D. Hurd, witness for defendant, from Buffalo and taking his deposition	15 35
Attending taking his deposition	2 00
Paid for printing brief in Supreme Court	45 00
" clerk's fees in this case	26 15
" costs in Supreme Court	156 85
Solicitor's fee in this court	20 00
	$480 91

STATE OF MICHIGAN,
County of Wayne:

De Witt C. Holbrook, of said county and State, being duly sworn, deposes and says that he is the solicitor in the above cause, & has personally attended to the same; that all the items contained in the above bill of costs as disbursements have been actually and necessarily in-

curred in the above cause; that said bill of costs is true and correct, as he verily believes.

D. C. HOLBROOK.

Subscribed and sworn to before me this 26th day of June, 1880.

JOSEPH C. AYRES,
Notary Public, Wayne County, Michigan.

To Messrs. ATKINSON, HAWLEY & ATKINSON,
Sol'c'rs for Def'd't Humphrey:

Take notice that the foregoing is a copy of the complainant's bill of costs proposed to be taxed, and of the affidavit to be read in support thereof, and that application will be made to the clerk of the said
16 court to tax the same at his office on the 30th day of June, A. D. 1880, at 9.30 o'clock a. m.

Dated this 25 day of June, A. D. 1880.

D. C. HOLBROOK,
Sol'c'r for Compl't.

STATE OF MICHIGAN,
County of Wayne:

Joseph C. Ayres of said county and State, being duly sworn, deposes and says, that on the 26th day of June, 1880, he served a copy of the above bill of costs and of the above affidavit in support thereof, together with a notice, of which the above is a true copy, upon Messrs. Atkinson, Hawley & Atkinson, sol'c'rs for def'd't Humphrey, by delivering to a clerk of Atkinson & Atkinson, successors to Atkinson, Hawley & Atkinson in their of'ice, he being in charge thereof, said Atkinson & Atkinson being absent therefrom.

JOSEPH C. AYRES.

Subscribed and sworn to before me this 26th June, 1880.

ED. E. KANE,
Notary Public, Wayne County, Michigan.

I hereby tax the complainant's costs in the within entitled cause at the sum of four hundred and eighty 91-100 dollars, June 30, 1880.

A. MANDELL, *Clerk.*

Filed June 30, 1880.

A. MANDELL, *Clerk.*

17 *Precipe to enrol decree.*

In the circuit court of the United States for the eastern district of Michigan In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM A. HURD, Charles A. Hurd & David Smith.

Mr. CLERK: Please enrol the decree & proceedings in this cause & issue an execution against George P. Humphrey and David Smith, two of the defendants in this cause, for taxed costs.

D. C. HOLBROOK,
Sol'r for Compl't.

(See circuit court eq. rule 15.)

(Endorsed:) Filed July, 1880, A. Mandell, clerk.

18 *Copy form of deed & proof of service.*

This indenture made this day of , in the year one thousand eight hundred and eighty, between George P. Humphrey, of Cheboygan, Cheboygan County, State of Michigan, of the first part, and Sanford Baker, of the same place, of the second part, witnesseth:

That, whereas, on the tenth day of June, in the year one thousand eight hundred and seventy-two, one Bela Chapman, deceased, late of Macinac, in the State of Michigan, made, executed, and delivered to the said party of the first part, a quit claim deed purporting to convey to the said party of the first part the following described premises, to wit: The south half or part of lot three, in section twenty-nine, in township thirty-eight north, range one west, in Cheboygan County, State of Michigan; and whereas, by virtue of a decree entered in the circuit court of the United States for the eastern district of Michigan, in equity, on the seventh day of June, 1880, in a certain cause therein pending, wherein the party of the second part is complainant and the said party of the first part and Hiram D. Hurd, Charles A. Hurd and David Smith are defendants, it was adjudged and decreed that the said party of the second part was and is entitled to all the right, title, and interest in and to said premises which the said party of the first part obtained by and through said deed from said Chapman to him, and as of the date thereof, and the said deed inured to the benefit of said party of the second part, and all the rights which the said party of the first part obtained thereby were adjudged and decreed to be vested in said party of the second part at and of the date of said deed.

And, whereas it was further ordered that the said party of the first part make, execute, acknowledge and deliver to the said party of the second part a deed conveying to him and his heirs the said premises, and that said deed contain a covenant against all the acts of the party of the first part and against the demands of all other persons claiming said premises from or under him:

Now, therefore, in consideration of twenty-five dollars paid into said court by said party of the second part for the use of the said party
19 of the first part, and in compliance with said decree the said party of the first part doth hereby grant, sell, remise, release, alien and confirm unto the said party of the second part all and singular the said premises above described and set forth, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all and singular the estate, right, title and interest which the said party of the first part obtained or acquired by virtue of the deed of said Bela Chapman to him of said premises. To have and to hold the said premises above described, with the appurtenances unto the said party of the second part, his heirs and assigns forever; and that the said party of the first part for himself, his heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that he the said party of the first part hath not heretofore done, committed, or willingly suffered to be done or commit'ed any act or thing whatsoever, whereby the premises hereby granted or any part thereof is, are, or shall, or may be charged or incumbered in title or estate, or otherwise howsoever.

In witness whereof the said party of the first part hath hereunto set his hand and seal on the day and year first above written.

[L. S.]

Signed, sealed and delivered in presence of—

STATE OF MICHIGAN,
County of :

On this day of , 1880, personally appeared before me the undersigned, a notary public in and for said coun'y, the above-named George P. Humphrey, known to me to be the person described, and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

Notary Public, ——— *County, State of Mic'gan.*

20 STATE OF MICHIGAN,
County of Cheboygan, ss:

Geo. W. Bell, of said county and State, being duly sworn, deposes and says, that on the twelfth day of June, 1880, he served a copy of the above instrument upon George P. Humphrey, esq., of Cheboygan, Cheboygan County, Michigan, by delivering the same to him personally.

GEO. W. BELL.

Subscribed and sworn to before me this 12th day of June, A. D. 1880.

SAM'L H. TAYLOR,
Notary Public, Cheboygan Co., Mich.

(Endorsed:) Filed July 14th, 1880. A. Mandell, clerk.

21 *Affidavits of failure to deliver deed.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd & David Smith.

STATE OF MICHIGAN,
County of Cheboygan:

Sanford Baker, of said county and State, being duly sworn, doth depose and say that he is the complainant in this cause; that he resides in Cheboygan, in said county of Cheboygan, and the said defendant, George P. Humphrey, also resides in the same place; that said George P. Humphrey has not delivered, or caused to be delivered, to this deponent any deed of the lands described in the decree in this cause, and in that respect has failed and neglected to comply with said decree.

SANFORD BAKER.

Subscribed and sworn to before me this ninth day of July, 1880.
[SEAL.] SAM'L H. TAYLOR,
Notary Public, Cheboygan County.

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd & David Smith.

22 STATE OF MICHIGAN,
County of Wayne:

De Witt C. Holbrook, of said county and State, being duly sworn

says that he is the solicitor of the complainant; that there has not been delivered to him by any person a deed executed by George P. Humphrey to the complainant of the premises described in the decree in this cause, nor does he believe any such deed has been executed by said Humphrey.

D. C. HOLBROOK.

Sworn to & subscribed before me this 13th July, 1880.

JOSEPH C. AYRES,
Notary Public, Wayne Co., Mich.

(Endorsed:) Filed July 14th, 1880. A. Mandell, clerk.

23 *Certified copy of decree & proof of service.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the seventh day of June, in the year one thousand eight hundred and eighty. Present, honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith, defendants. } In equity.

An appeal having been taken in this cause by the complainant to the Supreme Court of the United States, and it appearing by the mandate of said court now filed that the same was argued and submitted to said court, and having been duly considered, it was decreed that the decree of this court entered in said cause dismissing the bill filed therein be and the same was on the tenth day of May, 1880, reversed, with costs, and that the said complainant recover against the said defendants the sum of one hundred and fifty-six dollars and eighty-six cents for his costs in said Supreme Court expended, and that he have execution therefor, and it was further ordered that this cause be and the same was thereby remanded to this court with directions to enter a decree whereby it shall be required that the complainant deposit in the office of the clerk of this court for the use of the defendant, George P. Humphrey, the sum of twenty-five dollars, and that said Humphrey thereupon convey to the complainant the premises described in the bill in this cause, and that the deed contain a covenant against the grantor's own acts and against the demands of all other persons claiming under him. And this cause being now called for the entry of a decree therein in pursuance of said mandate, on motion of D. C. Holbrook, solicitor for complainant, it is ordered, adjudged and decreed by this court, the complainant having
24 deposited with the clerk of this court the sum of twenty-five dollars for the use of the defendant, George P. Humphrey, that the said George P. Humphrey, within twenty days after service on him of a copy of this decree, make, execute, acknowledge and deliver to the complainant a deed of, and conveying to him and his heirs, the following described premises, situate in the county of Cheboygan, State of Michigan, to wit: The south part of lot three of section twenty-nine, in township thirty-eight north, range one west, being the same premises purporting to be conveyed to said George P. Humphrey by Bela Chapman, the tenth day of June, 1872, by deed recorded in the office of the regis-

ter of deeds for the county of Cheboygan, Michigan, in book D of deeds, page one hundred and forty-three, and that said deed contain a covenant against all the acts of said George P. Humphrey and against the demands of all other persons claiming said premises from or under him; and it appearing to this court from the pleadings and the opinion of the said Supreme Court that the said complainant was and is entitled to all the rights, title, and interest in and to said premises, which the said George P. Humphrey obtained by and through said deed of said Chapman to him and as of th' date thereof, it is further ordered and decreed that the said deed inured to the benefit of said complainant, and all the rights which the said Humphrey obtained thereby be, and the same are hereby, adjudged and decreed to be vested in said complainant, and as of the date of said deed; and it is further ordered that this decree be recorded in the office of the register of deeds for the county of Cheboygan, where said real estate is situated. And it is further ordered, adjudged, and decreed that the said complainant do recover of the said George P. Humphrey and David Smith, defendants, the sum of one hundred and fifty-six dollars and eighty-six cents, the costs as taxed in said Supreme Court, and also the costs and expenses incurred by the complainant in this court, including the expenses of the record of this court remitted to the said Supreme Court, and that the same be taxed in this cou't and t'e complainant have execution therefor against said George P. Humphrey and David Smith.

25 THE UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify that the above and foregoing is a true copy of a decree entered upon the journal of the proceedings of said court, in the cause therein entitled; that I have compared the same with the original entry of said decree, and it is a true transcript therefrom and of the whole thereof.

Witness my official signature, and the seal of said court, at Detroit, in said district, this ninth day of June, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

[SEAL.] ADDISON MANDELL, *Clerk.*

REGISTER'S OFFICE,
Cheboygan County, ss:

Received for record the 12th day of June, A. D. 1880, at 10.30 a. m., and recorded in liber "I" of deeds, on pages 339, 340 & 341.

MEDARD METIVIER, *Register.*

STATE OF MICHIGAN,
County of Cheboygan, ss:

Geo. W. Bell, of said county and State, being duly sworn, deposes and says that on the twelfth day of June, 1880, he served a copy of the above decree, together with a copy of the above certificate thereto attached as hereto attached, upon the said defendant, George P. Humphrey, by delivering the same to him personally, and that at the same time he showed said George P. Humphrey the seal of said court impressed upon said certificate.

GEO. W. BELL.

Subscribed and sworn to before me this 12th day of June, A. D. 1880.
SAM'L M. TAYLOR,
Notary Public, Cheboygan Co., Mich'n.

(Endorsed:) Filed July 14, 1880. A. Mandell, cl'k.

26 *Proof of service of order to show cause.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant adjournment, at the district court room, in the city of Detroit, on Wednesday, the fourteenth day of July, in the year one thousand eight hundred and eighty. Present, honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPLAINANT,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, & David Smith, defendants. } In equity.

On reading and filing due proof of the service on the defendant George P. Humphrey of a copy of the final decree entered in this cause, also of a copy of the deed to be executed by him as settled by this court, and also on reading and filing the affidavits of the complainant and his solicitor showing the default and failure of said George P. Humphrey to execute and deliver the deed directed to be executed by him in and by said decree and within the time therein specified, on motion of D. C. Holbrook, solicitor for complainant, it is ordered that the said George P. Humphrey show cause before this court on the twenty-sixth day of July, A. D. 1880, why he should not be declared in contempt of this court for not executing and delivering said deed, and in case of his failure to show such cause, that an attachment for contempt do issue against him to bring him before this court to answer therefor.

THE UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify that the above
27 and foregoing is a true copy of an order entered upon the journal of proceedings of said court, in the cause therein entitled; that I have compared the same with the original entry of said order and it is a true transcript therefrom and of the whole thereof.

Witness my official signature and the seal of said court, at Detroit, in said district, this fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

[SEAL.] ADDISON MANDELL, *Clerk.*

STATE OF MICHIGAN,
County of Cheboygan:

Geo. W. Bell, of said county and State, being duly sworn, says that on the 17th day of June, 1880, he served the above certified copy of an order in the above cause on said defendant, George P. Humphrey, by delivering to said Humphrey a true copy thereof, together with a true copy of the certificate hereto annexed thereunto annexed, and that at the same time he showed said Humphrey the above and original certified copy of said order and certificate, and the seal of the court impressed on said certificate.

GEO. W. BELL.

Subscribed and sworn to before me this 17th day of July, 1880.
[SEAL.] SAM'L M. TAYLOR,
Notary Public, Cheboygan County, Mich.

(Endorsed:) Filed July 26th, 1880. A. Mandell, clerk.

28 *Affidavit in answer to order to show cause.*

The circuit court of the United States for the eastern district of Michigan. In chancery.

To the judges of said court:

The defendant, George P. Humphrey, in response to the order of this court to show cause why he should not be judged in contempt for not executing a deed as directed by a decree of this court, respectfully shows:

1st. That before said decree was entered this court gave this defendant leave to file, and he did file, a bill of supplement and review to obtain reimbursement for taxes and improvements paid and made upon the premises in question.

2nd. That said bill was duly filed before said decree was entered and the complainant, who is the defendant therein, has appeared and demurred thereto, and the same is now pending and undetermined.

3rd. That this defendant has been advised and verily believes that no process would issue against him to compel him to sign the deed in question, until the questions presented by his said bill were disposed of. All of which is respectfully submitted.

GEO. P. HUMPHREY.

STATE OF MICHIGAN,
County of Cheboygan, ss:

On this 22nd day of July, A. D. 1880, before me, personally appeared the above named George P. Humphrey, and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

WATTS S. HUMPHREY,
Notary Public, Cheboygan County, Mich.

STATE OF MICHIGAN,
County of Wayne, ss:

29 On this 24th day of July, 1880, personally came before me, a notary public in and for said county, John Atkinson, who, being duly sworn, says he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge.

JOHN ATKINSON.

Subscribed and sworn to before me this 24th day of July, 1880.
JAMES O'BRIEN,
Notary Public, Wayne Co., Mich.

(Endorsed:) Filed July 26th, 1880. A. Mandell, clerk.

30 *Order declaring def't Humphrey in contempt, &c.*

At a cession of the circuit court of the United States for the eastern

district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Tuesday the third day of August, in the year one thousand eight hundred and eighty; present, honorable Henry B. Brown, district judge.

SANFORD BAKER, COMPL'T,
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, and David Smith, def'ts. } In equity.

It appearing to the court that the defendant George P. Humphrey, was on the twelfth day of June, A. D. 1880, duly and personally served with a copy of the decree entered in this cause, and with a copy of the form of the deed as settled by the court, which he was by said decree required to execute and deliver to the complainant, and it also appearing by proof filed that said Humphrey failed and neglected for more than twenty days thereafter to so execute and deliver said deed, and this court having made an order, which was personally served on said Humphrey, that said Humphrey show cause before this court, on the 20th day of July, A. D. 1880, why he should not be declared in contempt for disobeying said decree in not executing and delivering said deed, and on hearing Messrs. Atkinson & Atkinson on behalf of said Humphrey, and D. C. Holbrook on behalf of complainant, and it being considered by the court that the said Humphrey failed and neglected to show any sufficient cause for not executing said deed, it is ordered and decreed that said George P. Humphrey be, and he is hereby, declared and ad'udged in contempt of this court for not obeying the order and decree of this court. And it is further ordered that the said George P. Humphrey do pay to the complainant or his solicitor ten dol-
31 lars, costs on this proceeding. And it is farther ordered, adjudged, and decreed that the said George P. Humphrey be, and he is hereby, directed to stand committed in the "Detroit House of Correction," in the city of Detroit, State of Michigan, there to be and remain charged upon this contempt until he shall execute, acknowledge, and deliver to the complainant or his solicitor a deed of the form settled by this court of the south half or part of lot three of section twenty-nine, in township thirty-eight north, of range one west, in Cheboygan County, State of Michigan, and shall also have paid said costs, unless this court shall see fit, sooner to discharge him and that a warrant issue for that purpose.

(Endorsed:) Entered & filed Aug. 3rd, 1880. A. Mandell, clerk.

32 *Claim of appeal.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Wednesday the fourth day of August, in the year one thousand eight hundred and eighty. Present, honorable Henry B. Brown, district judge.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, & David Smith. } In equity.

And now comes said defendant George P. Humphrey and claims an

appeal to the Supreme Court of the United States from the decree entered in this cause adjudging him guilty of contempt in not executing the deed mentioned in said decree, and committing him to the Detroit House of Correction until the payment of costs and the executing of said deed.

ATKINSON, HAWLEY & ATKINSON,
Solic't'rs for Def't Humphrey.

Filed Aug. 4th, 1880.

A. MANDELL, *Clerk.*

33 *Order allowing appeal.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pusuant to adjournment, at the district court room, in the city of Detroit, on Wednesday the fourth day of August, in the year one thousand eight hundred and eighty. Present, honorable Henry B. Brown, district judge.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, & David Smith. } In equity.

Said defendant, George P. Humphrey, having filed his claim for appeal herein, from the decree of this court, pronounced on the 3rd day of August, 1880, adjudging him guilty of contempt in not having executed to said complainant a deed of the property mentioned in said decree, imposing upon him the judgment of costs and committing him to the Detroit House of Correction until he executes said deed and pay said costs, on motion of Atkinson, Hawley & Atkinson, solicitors for said defendant Humphrey, it is ordered,

That said appeal be, and the same is hereby, allowed;

That said defendant, Humphrey, give the usual bond on appeal in the sum of five thousand dollars to be approved by the clerk of this court;

That all proceedings on said decree, and all process to enforce the same be stayed for ten days from this date, to await the filing of said bond;

That, upon the filing of said bond, all proceedings in this cause be stayed to await the decision of the Supreme Court upon said appeal.

(Endorsed:) Entered & filed Aug. 4th, 1880. A. Mandell, clerk.

34 *Bond on appeal.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, & David Smith.

Know all men by these presents that we, George P. Humphrey, as principal, and Watts S. Humphrey, as surety, are held and firmly bound unto said Sanford Baker in the full and just sum of five thousand (5,000) dollars to be paid to the said Sanford Baker, his certain attorney,

administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this 6th day of August, 1880.

Whereas lately at a session of said court held on the 3rd day of August, 1880, a decree was entered in said cause, adjudging said defendant George P. Humphrey guilty of contempt in not having executed to said complainant a deed of the premises mentioned in said decree, imposing upon him the payment of the costs of said proceeding for contempt, including ans attorney fee of $10, and directing his imprisonment until he executed said deed and pay said costs;

And whereas said defendant George P. Humphrey has filed his claim for an appeal herein from said decree to the Supreme Court of the United States, which said appeal has been duly allowed:

Now the condition of the above obligation is such that if the said George P. Humphrey shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

GEO. P. HUMPHREY, [L. S.]
WATTS S. HUMPHREY. [L. S.]

35 EASTERN DISTRICT OF MICHIGAN, *ss:*

On this 6th day of August, 1880, before me came Watts S. Humphrey, the surety above named, who, being by me duly sworn, says that he is the owner of real estate in said district worth ten thousand (10,000) dollars free from incumbrances, and subject to execution, over and above his legal debts and liabilities.

WATTS S. HUMPHREY.

Subscribed and sworn to before me this 6th day of August, A. D. 1880.

ADDISON MANDELL,
Comm'r Circuit Court U. S., Eastern District of Mich'n.

Filed Aug. 6, '80.

A. MANDELL, *Clerk.*

36 *Precipe for transcript.*

In the circuit court of the United States for the eastern district of Michigan. In equity.

SANFORD BAKER
vs.
GEORGE P. HUMPHREY, HIRAM D. HURD, Charles A. Hurd, & David Smith.

SIR: Please prepare and transmit to the clerk of the Supreme Court of the United States a transcript of the proceedings in the above entitled cause on appeal.

Yours, &c.,

ATKINSON, HAWLEY & ATKINSON,
Solicitors for Defendant George P. Humphrey.

To the clerk of said court.

Filed Sept. 10, '80.

A. MANDELL, *Clerk.*

37 No. 1631.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify the above and foregoing to be true copies of the records, files, papers, and proceedings on file and of record in the case of Sanford Baker, complainant, against George P. Humphrey, Hiram D. Hurd, Charles A. Hurd, & David Smith, defendants, subsequent to and including the mandate of the Supreme Court in the same cause on the first appeal therein, and also of the bond on appeal of said George P. Humphrey therein filed; that I have compared the same with the originals thereof in my office, and the same are true copies thereof and of the whole thereof.

In witness whereof I have hereunto set my hand and the seal of said court, at Detroit, this fifth day of October, A. D. 1880.

[SEAL.] ADDISON MANDELL, *Clerk.*

Clerk's fees, 88 fol., $13.20; certif., 50—$13.70. Exp. charges, 25—$13.95.

(Indorsement on cover:) No. 1069. George P. Humphrey, appellant, vs. Sanford Baker. E. Michigan C. C. U. S. Filed 23rd October, 1880.